**HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES**
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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Thursday, May 07, 2015
84th Legislature, Number 65
The House convenes at 10 a.m.
Part One

Sixty-four bills are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

The House will consider a Congratulatory and Memorial Calendar.

Alma Allen
Chairman
84(R) - 65

# HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Thursday, May 07, 2015
84th Legislature, Number 65
Part 1

SUBJECT: Studying the development of a market and conveyance network for water

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 8 ayes — Keffer, Ashby, Frank, Kacal, T. King, Larson, Lucio, Workman

0 nays

3 absent — D. Bonnen, Burns, Nevárez

WITNESSES: For — Albert Cortez, Coastal Water Regional Supply Company; Donovan Burton, San Antonio Water System; Mike Nasi, Water Energy Nexus for Texas Coalition; (*Registered, but did not testify*: Michelle Wittenburg, Balanced Energy for Texas; Jay Barksdale, Dallas Regional Chamber; Larry McGinnis, Exelon Corporation; Todd Votteler, Guadalupe-Blanco River Authority; Wes Strickland, Jackson Walker, Water Energy Nexus for Texas; Tom Oney, Lower Colorado River Authority; Wendy Foster, SJWTX; Mike Nasi, South Texas Electric Cooperative (STEC); Ned Munoz, Texas Association of Builders; CJ Tredway, Texas Oil & Gas Association; Perry Fowler, Texas Water Infrastructure Network; Max Jones, The Greater Houston Partnership)

Against — Steve Box, Environmental Stewardship; Michele Gangnes, League of Independent Voters of Texas; Myron Hess, National Wildlife Federation; (*Registered, but did not testify*: Judith McGeary, Farm and Ranch Freedom Alliance; Cyrus Reed, Lone Star Chapter Sierra Club)

On — (*Registered, but did not testify*: Matt Nelson, Texas Water Development Board)

DIGEST: HB 3298 would require the Texas Water Development Board (TWDB) to conduct a study to evaluate improvements to the transfer of water entitlements and the establishment of a water grid, including an integrated network of pipelines, pumping stations, reservoirs, and other works for the conveyance of water between river basins, water sources, and areas of water use in the state.

In conducting the study, TWDB would be required to:

- review studies previously conducted as part of the state water planning process or otherwise;
- identify the necessary and useful features of an efficient market for water, including water rights, institutions, and infrastructure;
- examine case studies of water markets both within and outside the United States;
- identify and evaluate potential sources of water for the market and the water grid;
- identify and evaluate potential areas of use for water delivered by the water grid, including municipal, industrial, agricultural irrigation, recreational, and environmental;
- evaluate alternative facilities with varying capacities, source and delivery points, and alignments — including subsea alignments — and whether the water grid should convey treated or untreated water;
- develop a strategy for the water grid to achieve optimal water use efficiency, water supply reliability, economic efficiency, the functioning of a market for water transfers, and the protection and enhancement of water rights, investments, and the natural environment;
- connect the establishment, construction, operation, and management of the water grid to the state water planning process;
- evaluate alternative methods for ownership, construction, operation, maintenance, control, and financing of the water grid;
- identify and evaluate methods to fund the establishment of a water grid;
- evaluate methods of incorporating existing water conveyance infrastructure into a water grid;
- consult with the Texas Commission on Environmental Quality, the Public Utility Commission of Texas, the Railroad Commission of Texas, and the General Land Office; and
- offer the public an opportunity to submit written comments on the study for TWDB consideration.

By September 1, 2016, TWDB would be required to submit to the

Legislature a final written report containing the findings of the study and recommendations for any legislation or other action necessary to implement the program.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 3298 would charge the Texas Water Development Board (TWDB) with taking the first step in creating a master plan for an efficient conveyance of water throughout the state by means of water markets and a water grid.

Water markets have been widely recognized as valuable tools to alleviate scarcity. The existence of a water market outside the current regulatory scheme would allow municipal utilities to seek willing sellers of water rather than the state having to enforce the water rights priority system or force cutbacks in agricultural water deliveries. The development of such a market along with a water grid would facilitate the conveyance of water from water right holders with excess supplies — or areas of relative abundance — to areas of relative shortage. Shifting supplies of water in this fashion would improve water security and help prevent shortages that would be devastating to the economy and the environment.

While some argue that the focus of the study should be on conservation strategies rather than a market and network for water, conservation, while a key strategy, is not enough on its own. To meet an ever-growing need, it is imperative that the state begin working toward ways to transport water from areas that have abundant resources to water-insecure communities. HB 3298 would help break away from the practice of hoarding water within arbitrary political boundaries by working toward a blueprint for a hydrovascular network that would enable the mutually beneficial sharing of water supplies between communities.

While there are concerns that the bill would not protect property rights or give sufficient consideration to the areas from which water could be transported, HB 3298 would only create a study and would not change the current regulatory environment or impact existing water rights.

OPPONENTS SAY:

HB 3298 would require a study on constructing a water grid — essentially pipelines — that could be costly, energy intensive, environmentally harmful and politically challenging, with the potential to pit some areas of the state against others. Developing a water grid could create management challenges if the wet areas of the state faced an extended drought and communities relying on imported water were left high and dry.

While HB 3298 would make a good faith effort to meet the state's water challenges, an expensive and elaborate water grid could harm the already stressed rivers and aquifers and risk the economic viability of rural areas from which water would be exported. Any discussion of water transfers should include consideration of long-term effects on the areas from which water would be transferred, including any impact to property rights.

TWDB estimates that the study will cost about $2 million. Using state and agency resources on a statewide grid could undermine efforts to build a consensus on statewide water policy that balances rural and urban interests. The study instead should focus on maximizing conservation and efficiency in Texas agriculture, industry, and cities. Maximizing water efficiency would minimize the financial, environmental, and social costs of pumping and transporting more water supplies.

As the state grows, it would be more appropriate to develop voluntary regional water markets, bound by clear conditions to protect rivers, aquifers, and rural communities. Texas also should continue to focus on local and regional projects, such as aquifer storage and recovery and wastewater reuse, to help communities meet reasonable water demands without subsidizing growth with water from other parts of the state.

NOTES:

According to the Legislative Budget Board's fiscal note, HB 3298 would result in a $2 million cost to general revenue in 2016.

SUBJECT: Using the crime victims compensation fund for sexual assault exam costs

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

WITNESSES: For — Chris Kaiser, Texas Association Against Sexual Assault; (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Melinda Smith, Combined Law Enforcement Associations of Texas; Julie Bassett)

Against — None

On — Gene McCleskey, Office of the Attorney General

BACKGROUND: Code of Criminal Procedure, art. 56.54 governs the crime victims compensation fund, which awards financial assistance to victims of violent crime for certain expenses not reimbursed by insurance or other sources. Revenue for the fund includes criminal court costs, fees, and fines. The program is administered by the Office of the Attorney General. The attorney general can use the crime victims compensation fund to reimburse a law enforcement agency for the reasonable costs of a medical examination incurred under Code of Criminal Procedure, art. 56.06.

Under that article, law enforcement authorities are required to pay the costs of medical examinations for some alleged sexual assault victims. Code of Criminal Procedure, art. 56.065 requires the Department of Public Safety to pay the costs of medical examinations for other certain alleged sexual assault victims. However, the attorney general does not have authority to use the fund to reimburse the Department of Public Safety for these exams. The attorney general also does not have authority to reimburse individuals who pay the costs of these sexual assault medical exams performed under Code of Criminal Procedure, art. 56.06 and art. 56.065.

DIGEST:

CSHB 1446 would expand the uses of the crime victims compensation fund to include reimbursing the Department of Public Safety for the costs of medical examinations for certain alleged sexual assault victims. It also would allow the fund to be used to make payments to or on the behalf of individuals who received medical examinations for alleged sexual assaults under Code of Criminal Procedure, art. 56.06 or art. 56.065 and would authorize the attorney general to make such payments.

The bill would take effect September 1, 2015, and would apply only to payments for medical care provided on or after that date.

NOTES:

The Legislative Budget Board estimates that CSHB 1446 would have no impact on general revenue related funds but would have a negative impact of $5.4 million in fiscal 2016-17 on the crime victims compensation fund.

SUBJECT: Funding for highway landscaping projects using native plants

COMMITTEE: Transportation — committee substitute recommended

VOTE: 11 ayes — Pickett, Martinez, Burkett, Y. Davis, Fletcher, Harless, Israel, Murr, Paddie, Phillips, Simmons

0 nays

1 absent — McClendon

WITNESSES: For — (*Registered but did not testify*: Jeri Brooks, Scenic Texas; Jim Reaves, Texas Nursery and Landscape Association)

Against — None

On — (*Registered but did not testify*: Mark Marek, Texas Department of Transportation)

BACKGROUND: The general appropriations act often includes a "green ribbon" rider, which requires the Texas Department of Transportation (TxDOT) to spend a proportion of a project budget on landscaping projects along highways. Both versions of the proposed budget for fiscal 2016-17 contain instructions in Article 7, rider 15 for Green Ribbon Project enhancements, which would require TxDOT to allocate one-half of one percent to one percent of the amount spent on highway construction, maintenance, or improvement contracts in certain areas rated non-attainment and near non-attainment in terms of air quality.

Some observers believe that additional guidelines in statute would be useful in assuring that the spending of highway contract funding on beautification projects resulted in value for the state.

DIGEST: CSHB 3302 would require the Texas Department of Transportation (TxDOT) to develop guidelines for beautification projects on highway rights of way requiring the use of native or regionally appropriate plants. The guidelines also would prioritize plants that were low maintenance

and, as appropriate, drought resistant.

CSHB 3302 would require TxDOT to allocate money for landscaping improvements for each highway project that cost $5 million or more. The money would be spent in the TxDOT district where the project was located. If a project were located in more than one district, landscaping funds would be divided between the districts according to the amount of the contract spent in each. TxDOT could consider any financial assistance from a local government or private funding when allocating landscaping funds.

Money for these landscaping improvements would be allocated based on the lesser of the actual or estimated amounts spent on each highway contract as follows:

- 1 percent of the amount of a contract that cost or was expected to cost less than $50 million; and
- one-half of 1 percent of the amount of a contract that cost or was expected to cost $50 million or more.

CSHB 3302 would take effect September 1, 2015.

SUBJECT: Regulating groundwater production for retail public utilities

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 7 ayes — Keffer, D. Bonnen, Kacal, Larson, Lucio, Nevárez, Workman

3 nays — Burns, Frank, T. King

1 absent — Ashby

WITNESSES: For — Jason Knobloch, Coryell City Water Supply District; Paul Pittman, Polonia Water Supply Corporation; Fred Aus and Lara Zent, Texas Rural Water Association; (*Registered, but did not testify*: Matt Phillips, Brazos River Authority; Perry Fowler, Texas Water Infrastructure Network)

Against — (*Registered, but did not testify*: Steve Box, Environmental Stewardship; Drew Satterwhite, North Texas Groundwater Conservation District; C.E. Williams, Panhandle Groundwater Conservation District; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Josh Winegarner, Texas Cattle Feeders Association; Billy Howe, Texas Farm Bureau; Doug Shaw, Upper Trinity Groundwater Conservation District)

On — Paul Nelson, Lone Star Groundwater Conservation District; Ty Embrey, Middle Trinity Groundwater Conservation District, Clearwater Underground Water Conservation District; Brian Sledge, Prairielands Groundwater Conservation District, Upper Trinity Groundwater Conservation District, Lone Star Groundwater Conservation District, Benbrook Water Authority, Barton Springs Edwards Aquifer Conservation District; (*Registered, but did not testify*: John Dupnik, Barton Springs Edwards Aquifer Conservation District)

BACKGROUND: Under Water Code, sec. 36.116 a groundwater conservation district, by rule, may regulate the production of groundwater by limiting the amount of water produced based on acreage or tract size. In regulating the production of groundwater based on acreage or tract size, groundwater conservation districts may consider the service needs or service area of a retail water utility.

DIGEST:

CSHB 3356 would amend the Water Code by requiring a groundwater conservation district to determine the production amount for a retail public utility that provided retail water service inside the district by considering the service needs or service area of the retail public utility.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 3356 would ensure that retail public utilities could produce an adequate amount of groundwater for their service areas. For groundwater conservation districts that determine permit amounts based on tract size or acreage, the bill would require them to consider production amounts for a retail public utility based on the service needs or service area of the community it serves, not on the size of the well site. Current law already allows districts to consider the service area. The bill simply would strengthen that provision.

Retail public utilities typically own only a small amount of land surrounding the well site, but they provide potable water service to a large service area. When a groundwater district restricts pumping based on the size of the well site, it results in an insufficient amount of water to meet the community's needs. Rural systems are having to purchase large tracts of land in order to pump what is needed to serve their communities.

This bill would provide discretion and flexibility to groundwater districts in their permitting decisions and in how they interpret the service needs of a utility, while also ensuring that service needs were taken into account.

OPPONENTS SAY:

CSHB 3356 could infringe on the property rights of landowners by requiring groundwater conservation districts to consider the service area of a retail public utility when determining production amounts. Acreage typically is associated with a groundwater well to allow for enough space to not affect other well owners. Requiring groundwater conservation districts to consider the service area of a retail public utility, rather than tract size or acreage, could impact the groundwater production of a landowner if the landowner's acreage was within the service area of the utility. A retail public utility should not be able to produce groundwater underneath land it does not own.

SUBJECT: Requiring ERS to offer a TRICARE supplemental health insurance plan

COMMITTEE: Pensions — committee substitute recommended

VOTE: 7 ayes — Flynn, Alonzo, Hernandez, Klick, Paul, J. Rodriguez, Stephenson

0 nays

WITNESSES: For — Jack Leinweber, VetUSA; (*Registered, but did not testify*: Edward Singer, Selman and Co.)

Against — None

On — David Lacy, Employees Retirement System of Texas

BACKGROUND: The TRICARE Military Health System is the health care program provided by the U.S. Department of Defense to certain veterans and their spouses and children. The Employees Retirement System of Texas (ERS) estimates there are about 8,000 military veterans working for the state who are eligible for TRICARE.

Some have called for ERS to offer eligible employees a TRICARE supplemental plan, which could offset out-of-pocket costs left by TRICARE. Such a supplemental TRICARE plan could save money for employees who currently pay ERS to cover their dependents. The state could realize savings if veterans opt out of ERS.

DIGEST: CSHB 3307 would require ERS to make a TRICARE Military Health System supplemental plan available to a state employee or annuitant who waived coverage under the state's basic health plan. ERS could not contribute to the premium or cost of the supplemental plan.

ERS would be authorized to adopt rules necessary to implement the bill, including rules for eligibility, available insurance products, and enrollment in the plan.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUBJECT: Release by a hospital of fetal remains

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Crownover, Naishtat, Blanco, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

2 absent — Coleman, Collier

WITNESSES: For — Erica Raef; Joshua Raef; (*Registered, but did not testify*: Jennifer Banda, Texas Hospital Association)

Against — None

On — (*Registered, but did not testify*: Allison Hughes, Department of State Health Services; John Seago, Texas Right to Life)

BACKGROUND: State law does not require a hospital to release the remains of an unintended, intrauterine fetal death on the request of a parent. Some have called for hospitals to be required to release fetal remains to a parent upon request.

DIGEST: HB 635 would require a hospital to release the remains of an unintended, intrauterine fetal death on the request of a parent of an unborn child, in a manner appropriate under law and the hospital's practice for disposition of a human body.

The bill would take effect September 1, 2015.

SUBJECT: Removing petition requirement for certain judicial candidates

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Laubenberg, Goldman, Fallon, Phelan, Reynolds, Schofield

0 nays

1 absent — Israel

WITNESSES: For — Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: Jesse Romero, Common Cause Texas; Lon Burnam, Public Citizen; Rosemary Edwards; Kathy Haigler; Jennifer Hall; Brandon Moore; Jason Vaughn)

Against — Alan Vera, Harris County Republican Party Ballot Security Committee

On — (*Registered, but did not testify*: Ashley Fischer, Secretary of State; Keith Ingram, Texas Secretary of State-Elections Division)

BACKGROUND: Election Code, sec. 172.021 requires a candidate to make an application and pay a filing fee to be entitled to a place on the general primary election ballot. In lieu of the filing fee, a candidate may submit a valid petition with a certain amount of signatures.

Election Code, sec. 172.021(e) requires candidates for certain judicial offices who choose to pay the filing fee to also accompany their application with a petition for a place on the general primary election ballot. These judicial offices include:

- chief justice or justice of a court of appeals in a county with a population of more than 1 million;
- district or criminal district judge of a court in a county with a population of more than 1.5 million;
- judge of a statutory county court in a county with a population of more than 1.5 million; and

- justice of the peace in a county with a population of more than 1.5 million.

The section requires a minimum of 250 signatures if the candidate chooses to pay the filing fee along with the petition, but if the candidate files the petition in place of the filing fee, 500 signatures are required. The signatures are prohibited from being obtained on the grounds of a county courthouse or courthouse annex.

DIGEST:

HB 3880 would repeal Election Code, sec. 172.021(e), which requires certain candidates to file petitions with their application to be placed on a primary election ballot.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 3880 would remove an unfair and outdated barrier to entry for certain judicial positions. Candidates for similar elected positions are not required both to file a petition and pay a fee,. This bill would make the requirements to be placed on a ballot more consistent for all candidates running for public office. While vetting candidates is important, petition requirements could harm the democratic process by discouraging individuals from running for office.

The petition process also can be a source of potential litigation when the validity of petition entries is disputed. These disputes can prevent a candidate from being placed on the ballot or cause a financial burden for the candidate. The bill would simplify the eligibility process and save time, both for the potential candidate and those responsible for checking the signatures and ensuring their validity.

OPPONENTS SAY:

HB 3880 would repeal the petition requirement, an important part of candidate vetting. A candidate who is qualified to run for office should have no trouble obtaining a few hundred signatures. These interactions with the public can be an important part of an elected official’s duties.

SUBJECT: Conflict of interest and discrimination policy for advance directive review

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Geren, Harless, Huberty, Kuempel, Smithee, Sylvester Turner

0 nays

2 absent — Farney, Oliveira

WITNESSES: For — Dennis Borel, Coalition of Texans with Disabilities; David Zientek, Seton Healthcare Family, Texas Catholic Conference, Texas Hospital Association; Kyleen Wright, Texans for Life Committee; Beverly Nuckols and Joe Pojman, Texas Alliance for Life, Inc.; Jeffery Patterson and Jennifer Allmon, the Texas Catholic Conference of Bishops; (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Gabriela Saenz, CHRISTUS Health; Jacqueline Rodriguez, Texans for Life Committee; Ruth Allwein, Leah Brown, and Erin Groff, Texas Alliance for Life; Sara Austin, Texas Medical Association; Carlos Higgins, Texas Silver Haired Legislature; Christian Duran; Debra McDaniels; Terry Williams)

Against — Emily Kebodeaux, John Seago, and Andrew Schlafly, Texas Right to Life; Richard DeOtte; Michael Woelfel; (*Registered, but did not testify*: Bob Kafka, Not Dead Yet of Texas; MerryLynn Gerstenschlager, Texas Eagle Forum; Elizabeth Graham, Texas Right to Life; and six individuals)

On — (*Registered, but did not testify*: Allison Hughes, Department of State Health Services)

BACKGROUND: The Advance Directives Act in Health and Safety Code, ch. 166 consolidated former chapters of code governing a directive to physicians (more commonly known as a living will), durable power of attorney for health care, and out-of-hospital do-not-resuscitate (DNR) orders.

Health and Safety Code, sec. 166.046 requires an ethics or medical committee to review a physician's refusal to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient. A patient's attending physician cannot be a member of that committee. Statute requires a patient to be given life-sustaining treatment during the review.

DIGEST:

HB 2351 would require each health care facility that provided review by an ethics or medical committee under the Advance Directives Act to adopt and implement:

- a policy to prevent financial and health care professional conflicts of interest that could arise during an advance directive review; and
- a policy to prohibit consideration of a patient's permanent physical or mental disability during an advance directive review, unless the disability was relevant in determining whether a medical or surgical intervention was medically appropriate.

HB 2351 would require a health care facility to adopt these policies by April 1, 2016. The adopted policies would apply to an ethics or medical committee review conducted on or after April 1, 2016.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 2351 would ensure that an ethics or medical committee under the Advance Directives Act did not make quality-of-life decisions based on a patient's disability or for monetary reasons. The bill would be a reasonable step toward increasing transparency in hospital facility ethics committees and would recognize that decisions regarding treatment should be made through the lens of the inherent sanctity of life.

The bill's provision allowing a health facility to take a person's disability into consideration if it was relevant to determining whether an intervention was medically appropriate was developed in consultation with advocacy organizations for people with disabilities. This provision is necessary to ensure that people with disabilities would receive proper medical care if their disability was relevant to such a determination.

The bill would ensure that ethics or medical committees developed a policy to prevent financial conflicts of interest and discrimination against a person with a disability, and it would do this without overreaching and without creating a burdensome mandate for health facilities that could impair a physician's ability to properly practice medicine. The bill's provisions are limited in scope to ensure that rural hospitals could comply with the provisions. The bill also would reflect the fact that ethics committees make decisions about whether a physician was properly practicing to a standard of care, not whether a patient will live or die.

OPPONENTS SAY:

HB 2351 might not reform the Advance Directives Act in a meaningful way because it would not specify what the hospital facilities' policies on conflict of interest and discrimination would have to include past vague guidelines. The bill also would include a potential loophole by allowing health facilities to consider a patient's permanent physical or mental disability during a review if the disability was relevant in determining whether an intervention was medically appropriate.

OTHER OPPONENTS SAY:

A hospital should not have the final authority over whether a patient would receive a ventilator, food, water, or dialysis. The bill should go further to fix the issue of ethics committees having substantial power over a patient's health decisions.

SUBJECT: Requiring voter's registration to match address on certain documents

COMMITTEE: Elections — committee substitute recommended

VOTE: 4 ayes — Laubenberg, Fallon, Phelan, Schofield

1 nay — Israel

2 absent — Goldman, Reynolds

WITNESSES: For — Jacquelyn Callanen, Bexar County Elections Administrator and Texas Association of Elections Administrators; Cheryl Johnson, Galveston County Tax Office; Ed Johnson, Harris County Clerk's Office; Alan Vera, Harris County Republican Party Ballot Security Committee; William Fairbrother, Texas Republican County Chairmen's Association, Legislative Chair; Carol Kitson; Colleen Vera; (*Registered, but did not testify*: Rachael Crider, Galveston County Tax Office; Sheryl Swift, Galveston County Tax Office; Erin Anderson, True the Vote; Karen Hobson; John Hobson; Kat Swift)

Against — Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: Willie O'Brien, Mountain View College Student Government Association; Yannis Banks, Texas NAACP)

On — Janice Evans, County and District Clerks; John Oldham, Texas Association of Elections Administrators; Keith Ingram, Texas Secretary of State, Elections Division; (*Registered, but did not testify*: Ashley Fischer, Secretary of State's Office)

BACKGROUND: Under Election Code, sec. 16.091, any registered voter may challenge the registration of another voter of the same county at a hearing before a registrar.

Upon receiving a challenge, the registrar is required to send the challenged voter a confirmation notice under Election Code, sec. 15.051. The voter would then have 30 days to submit to the registrar a written, signed response confirming the voter's current residence, under Election

Code, sections 15.052 and 15.053.

DIGEST:

CSHB 1096 would require registered voters who receive a notice to confirm their address to provide evidence that their residence address matches the first of the following that applies to the person:

1. the address on the person's driver's license, or if the person has notified the Department of Public Safety (DPS) of a change of address, the address in the notification;
2. the address on the person's personal identification card, or if the person has notified DPS of a change of address, the address in the notification, unless the person has a commercial driver's license;
3. the address on the person's concealed handgun license, or if the person has notified DPS of a change of address, the address in the notification;
4. an address where the person receives mail other than a post office box or other similar location that does not correspond to a residence;
5. the address the person claims as a Texas homestead; or
6. the address of the person's vehicle registration.

Under the bill, a person whose residence has no address would be required to execute an affidavit providing a description of the location of the person's residence and deliver it with the response to the confirmation notice.

The provisions added by the bill would be reflected in content of the voter confirmation notice response form under sec. 15.052(b) and the requirements for the voter's signed response to the notice under sec. 15.053(a). The above provisions would not apply to:

- members of the armed services or their spouses and dependents;
- college students;
- victims of family violence, sexual assault, or stalking whose addresses were confidential under the Code of Criminal Procedure;
- federal and state judges and their spouses, whose driver's license address was the courthouse address; or

- peace officers whose addresses were omitted from their driver's licenses.

The bill would require the secretary of state to adopt rules to implement the provisions of the bill.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1096 would ensure that people registered to vote using an address that was consistent with where they actually lived. It also would clarify the definition of residence in the Election Code, which is vague under current law and has led to litigation.

Residence issues mostly arise when people with multiple addresses attempt to use those addresses strategically to advance their political goals. This bill would ensure that they were restricted to using their actual residence.

This bill would not place a significant burden on voters who change addresses because they are already required to notify the Department of Public Safety (DPS) within 30 days of a change of address under the Transportation Code and the Government Code.

Homeless voters would not be significantly affected by this bill because the affidavit required to prove their residence location simply would require them to provide a signed affirmation of the information they are required to include in their voter registration application under Election Code, sec. 13.002.

The bill would not burden elections administrators because it would not require enforcement of residency requirements at the time of voting. Instead, the provisions of this bill would be enforced when registrations were challenged.

OPPONENTS SAY:

CSHB 1096 would set obstacles to voting in front of a large part of the electorate. Although people are required to update their addresses when they move, many fail to do so and do not remember until their identification cards expire. These laws rarely are enforced because mail is

forwarded to the new address. Requiring registrars to ensure that identification addresses match voting addresses would force them to police provisions of the Transportation Code that even DPS does not try to enforce.

Challenges to voter registrations would be significant, creating a burden on registrars. The requirements would create an incentive for political organizations to abuse the ability to challenge voter registrations and issue frivolous challenges, knowing that many people would not meet the requirements of the bill.

This bill would make it difficult for homeless people to vote if their voter registrations were challenged. It would be difficult for them to even receive confirmation notices — and if they did, they still would have a difficult time getting an affidavit to the registrar in time to avoid cancellation of their voter registration.

SUBJECT: Waiving state-operated facility entrance fees for persons with disabilities

COMMITTEE: Culture, Recreation and Tourism — committee substitute recommended

VOTE: 4 ayes — Guillen, Larson, Murr, Smith

0 nays

3 absent — Dukes, Frullo, Márquez

WITNESSES: For — Bob Kafka, Adapt of Texas; (*Registered, but did not testify*: Joe Tate, Community NOW!; Cathy Cranston, Personal Attendant Coalition of Texas; Danny Saenz)

Against — None

On — Kevin Good, Texas Parks and Wildlife Department

BACKGROUND: Government Code, sec. 442.0051 authorizes the Texas Historical Commission to establish reasonable admission fees appropriate to historic sites under its jurisdiction.

Parks and Wildlife Code, sec. 13.015 authorizes the Texas Parks and Wildlife Department to charge and collect user fees for park services. The fees are set by the Parks and Wildlife Commission.

Some observers have noted that the low-paid attendants of people with disabilities living on small Social Security incomes often pay the cost of entrance fees when accompanying clients on outings.

DIGEST: CSHB 659 would require the Texas Historical Commission and the Parks and Wildlife Department to waive certain fees for persons with disabilities and the paid attendants present to assist them.

The Texas Historical Commission would waive individual or vehicle entrance fees to museums and other facilities under the commission's control for a person with a physical, mental, intellectual, or developmental

disability and that person's paid attendant.

The Parks and Wildlife Department would waive individual or vehicle entrance fees to state parks, recreational areas, and other facilities under the department's control for a person with a physical, mental, intellectual, or developmental disability and that person's paid attendant.

Both the Historical Commission and the Parks and Wildlife Commission would, in consultation with the Health and Human Services Commission, establish by rule eligibility requirements and procedures to implement the bill.

This bill would take effect September 1, 2015.

SUBJECT: Promoting recycling of certain electronic waste via signs, information

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Morrison, E. Rodriguez, Kacal, K. King, P. King, Lozano, Reynolds, E. Thompson

1 nay — Isaac

WITNESSES: For — Andrew Dobbs, Texas Campaign for the Environment; (*Registered, but did not testify*: Lindsey Baker, City of Denton; Cyrus Reed, Lone Star Chapter Sierra Club; David Weinberg, Texas League of Conservation Voters)

Against — Stephen Minick, Texas Association of Business; Brenda Haney, TxSWANA

On — (*Registered, but did not testify*: Brian Christian, Texas Commission on Environmental Quality)

DIGEST: CSHB 1058 would add to the Solid Waste Disposal Act in the Health and Safety Code requirements that owners and operators of solid waste facilities post conspicuous signs encouraging the recycling of electronic waste, defined as certain computer and television equipment eligible for collection and recovery under a manufacturer's recovery plan or recycling program.

Commercial transporters of solid waste who took waste to a solid waste facility also would be required at least once a year to provide an informational insert that encouraged electronic recycling to each person with whom the transporter had contracted. This provision relating to the informational insert would expire December 31, 2017.

Owners and operators of solid waste facilities that posted the required signage would not be liable for electronic waste collected or disposed of at their facilities, nor would they be required to remove such waste. In addition, commercial transporters that provided the required informational

insert would not be responsible for electronic waste they carried, nor would they be required to remove such waste. These entities would not be considered in violation of the bill if they made a good faith effort to comply.

The Texas Commission on Environmental Quality (TCEQ) by rule would develop the sign and informational insert, which would include information relating to recycling programs for electronic waste and TCEQ's website. TCEQ would have to adopt rules to implement the bill by December 31, 2015.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1058 would provide additional encouragement for the public to use important existing programs to recycle computers and televisions. The bill would impose minor obligations on solid waste owners, operators, and commercial transporters and would have both economic and environmental benefits.

According to one estimate, Texas recycled 1.41 pounds of electronics per person in 2014. Meanwhile, estimates of 5 to 7 pounds per person have been reported among other states with electronics recycling programs, indicating that Texas can do much more. Additional promotion and encouragement of the use of recycling programs would boost recycling rates, help keep the environment clean, save space in landfills, and even create new jobs related to processing the recycled materials.

OPPONENTS SAY:

Although encouraging recycling of electronic waste is a worthy cause, CSHB 1058 would place an undue burden on the owners and operators of solid waste facilities to post signage. The cost and effort involved in encouraging recycling should be borne by the state. Solid waste facilities already have other state-imposed signage requirements, and this bill would add more. In addition, posting signage at the landfill is not the best place to inform or remind individuals to recycle their electronics. They might not see the signs, or they might already have disposed of their electronics. There are better ways to promote this important program.

OTHER OPPONENTS SAY:

The “good faith” protection of CSHB 1058 is not well-defined and would be subject to interpretation. Therefore, it is not clear what level of protection the bill actually would provide to solid waste facility owners and commercial transporters.

SUBJECT: Designating certain areas as banking or credit union development districts

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 5 ayes — Parker, Longoria, Capriglione, Flynn, Stephenson

0 nays

2 absent — Landgraf, Pickett

WITNESSES: For — Stephen Scurlock, Independent Bankers Association of Texas; Jeff Huffman, Texas Credit Union Association (*Registered, but did not testify*: Laura Rosen, Center for Public Policy Priorities; Larry Casto, City of Dallas; David Emerick, JPMorgan Chase; Woody Widrow, RAISE Texas; Ashley Harris, Texans Care for Children; John Heasley, Texas Bankers Association; Monty Wynn, Texas Municipal League)

Against — None

On — Charles Cooper, Texas Department of Banking (*Registered, but did not testify*: Everette Jobe, Texas Department of Banking)

BACKGROUND: Many Texans live in areas underserved by banks and credit unions and have little access to or experience with mainstream financial institutions. Bank development district programs outside Texas have proved successful in encouraging banks and credit unions to open in underserved areas that have a demonstrated need for the services those institutions provide.

DIGEST: **Banking and credit union development districts.** CSHB 1626 would direct the Finance Commission to administer and monitor a banking development district program, and would direct the Credit Union Commission to administer and monitor a credit union development district program. These programs would be required to encourage branches of financial institutions or credit unions to open in geographic areas where there was a demonstrated need for their services.

The Finance Commission and the Credit Union Commission, in

consultation with the Economic Development and Tourism Office, would be required to adopt rules governing the designation of development districts by January 1, 2016. The rules for each type of development district would be required to consider:

- the location, number, and proximity of banks or credit unions that already exist;
- economic viability and credit needs of the community;
- existing commercial development; and
- the impact additional banking services would have on potential economic development.

CSHB 1626 would allow a local government, in collaboration with a financial institution, to submit an application to the Finance Commission or the Credit Union Commission for the designation of a development district. The Finance Commission or Credit Union Commission would be required to make a determination whether to approve an application within 120 days of its submission, and send notification of approval to the local government, bank or credit union, comptroller, lieutenant governor, House speaker, and Texas Economic Development and Tourism Office.

**District depositories.** The bill would allow the state or a local government to designate by resolution a financial institution located in a development district as a district depository. The bill would require the resolution to specify the maximum amount that the state or local government could keep on deposit with the banking district or credit union district depository.

Subject to agreement, the funds deposited into the district depository would be able to earn a fixed interest rate that was equal to or below the depository's two-year certificate of deposit rate. In calculating whether the state was receiving a sufficient yield from any public funds put into a district depository to meet its standard of care for the investment of public funds, the comptroller or governing body of a local government would be allowed to consider the benefit to the state of stimulating economic development.

**Property tax abatement.** The bill would permit local governments to

enter into a tax abatement agreement with a credit union or bank that owned property in a development district on the condition that the credit union or bank opened a branch on the property. The designation of an area as a banking development district or credit union development district would constitute the designation of the area as a reinvestment zone without further hearings or other procedural requirements. Only the governing body of a municipality or county would be eligible to enter into a tax abatement agreement with the owner of property located in a development district.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUBJECT: Requiring the use of state credit or charge cards for agency purchases

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 6 ayes — Elkins, Galindo, Gonzales, Gutierrez, Leach, Scott Turner

0 nays

1 absent — Walle

WITNESSES: For — Mary Lewis, Citibank; Ron Lewis, Mastercard; (*Registered, but did not testify*: David Cox, Citibank; Brian Yarbrough, JPMorgan Chase; Kelly Rodgers, Wells Fargo Bank)

Against — None

On — (*Registered, but did not testify*: Ron Pigott, Health and Human Services Commission; Chuks Amajor and Rob Coleman, Comptroller of Public Accounts)

BACKGROUND: Government Code, sec. 403.023 authorizes the Comptroller of Public Accounts to establish rules regarding the use of credit and charge cards for agency purchases. The comptroller can authorize particular state agencies to use credit or charge cards and authorize credit or charge cards' use in the place of petty cash.

DIGEST: CSHB 1743 would allow the comptroller, under existing authority, to develop rules that would require most state agencies in the executive branch to use a state credit or charge card for all purchases, unless the comptroller determined a different form of payment was more advantageous to the state.

The rules also would prohibit state employees from using personal credit or charge cards for agency purchases, including travel expenses and services. Higher education institutions, the Health and Human Services Commission (HHSC), health and human services agencies, and the

governor's office would not be required to follow these rules.

The bill would require the HHSC executive commissioner to develop by rule a policy that would encourage HHSC and other health and human services agencies to use a state credit or charge card to pay for travel expenses.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

NOTES:

The Legislative Budget Board's analysis stated that CSHB 1743 would have an indeterminate cost to the state, but that the cost was expected to be insignificant, depending on determinations made by the comptroller's office.

SUBJECT: Allowing children to seek access to parents under guardianship

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

0 nays

WITNESSES: For — Sherry Johnston; Debby Valdez, GRADE; Lisa Caprelli, Kasem Cares Foundation; Kerri Kasem, Kasem Cares Foundation; Guy Herman, Statutory Probate Judges of Texas; Donna Defrancesco; (*Registered, but did not testify*: Terry Hammond; Chris Masey, Coalition of Texans with Disabilities; Gyl Switzer, Mental Health America of Texas)

Against — Laura Upchurch

On — Kristi Hood

BACKGROUND: Title 3 of the Estates Code provides the procedures for appointing guardians for incapacitated persons. Guardians have broad authority over their wards and can sometimes use that authority to prevent family members from visiting the ward.

DIGEST: CSHB 2665 would allow a child of a ward under guardianship to file an application with the court requesting access to the ward. The court would schedule a hearing on the application within 60 days, unless the application stated that the ward's health was in significant decline, in which case the hearing would be conducted within 10 days.

A guardian would be served personally at least 21 days before the hearing, except when the ward's health was alleged to be in significant decline, in which case service would occur as soon as practicable.

After a hearing, the court would issue an order that could:

- prohibit the guardian from preventing access to the ward if the

applicant demonstrated that the guardian's past acts had prevented access and that the ward desired contact; and
- specify the frequency, time, place, location and other terms of access.

The court before deciding whether to issue or modify an order would consider any prior protective orders issued against the applicant to protect the ward and could consider whether visitation should be supervised or whether it should be suspended or denied. The court also could award the prevailing party court costs and attorney's fees.

This bill also would require a guardian to inform a ward's spouse, parents, siblings, and children if the ward:

- died, in which case the guardian would inform the ward's relatives of any funeral arrangements and the location of the ward's final resting place;
- was admitted to a hospital for acute care for three or more days;
- changed residence; or
- was staying at a location other than the ward's residence for more than a week.

The ward's relatives could elect not to receive notifications through written notice to the guardian, and the guardian would not be required to provide notice to any relatives that the guardian was unable to locate after making reasonable efforts.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015. The bill would apply to guardianships created before, on, or after the effective date.

SUBJECT: Requiring a notice on fuel pumps of federal, state tax rates for motor fuel

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: None

BACKGROUND: Federal and state taxes on motor fuel are included in the price paid by consumers at the motor fuel pump. Some consumers have suggested that transparency about tax rates could be improved.

DIGEST: CSHB 991 would require the Texas Department of Agriculture to display a notice of the current rates of the federal and state motor fuel taxes on every motor fuel pump that sold motor fuel. The notice would:

- display the current rate of each tax, in cents per gallon, for each type of motor fuel;
- be displayed on each face of the pump on which the price of the motor fuel sold from the pump was displayed; and
- be displayed in a clear, conspicuous, and prominent manner.

The bill would take effect on January 1, 2016.

NOTES: The Legislative Budget Board's fiscal note estimates that the bill would have a negative net impact to general revenue of $160,000 through fiscal 2016-17.

SUBJECT: Pre-litigation requirements for condo owners' associations in defect cases

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Clardy, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

2 nays — Farrar, Hernandez

WITNESSES: For — Les Brannon, D.R. Horton, Inc.; Scott Norman, Texas Association of Builders; Robert Burton; Patrick Casey; Amy Hansen; Terry Mitchell; (*Registered, but did not testify*: Michael Chatron, AGC Texas Building Branch; Peyton McKnight, American Council of Engineering Companies of Texas; Drew Campbell, Associa, Inc.; Jon Fisher, Associated Builders and Contractors of Texas; Neal T. "Buddy" Jones, Perry Homes; Jay Propes, Spectrum Association Management, LLC; Mike Hull, Texans for Lawsuit Reform; Felicia Wright, Texas Association of Builders; Steven Garza, Texas Association of REALTORS; George Christian, Texas Civil Justice League; David Mintz, Texas Institute of Building Design; and six individuals)

Against — Susan Valk, Brodie Heights Condominiums HOA; D'Ann Pate, Cat Hollow HOA; Hugh Levrier, San Felipe Townhomes HOA; Connie Heyer, Texas Community Association Advocates; Kerry Lee; Michael Parr; Mauro Reyna; Chris Rhody; (*Registered, but did not testify*: Randy Happel, Cat Hollow Condominium HOA; Worth Ross, Texas Community Association; Kristen Hawkins; David Kahne)

On — Bryan Blevins, Texas Trial Lawyers Association; (*Registered, but did not testify*: David Lancaster, Texas Society of Architects)

DIGEST: CSHB 1455 would restrict condominium unit owners' associations in condominiums that had eight or more units from filing lawsuits or initiating arbitration proceedings to resolve a claim pertaining to the construction or design of a unit on behalf of all of the owners unless they obtained:

- an inspection and a written independent third-party report from a licensed professional engineer that identified the specific units or common elements subject to the claim, described their condition, and described any modifications, maintenance, or repairs done by the unit owners; and
- approval from unit owners holding at least 67 percent of the total votes in the association, in person or by proxy, at a special meeting.

Any third party report would have to be obtained directly by the association and paid for by the association and could not be prepared by anyone affiliated with an attorney or law firm representing or planning to represent the association in the claim.

At least 10 days before any inspection occurs, an association would be required to provide each party subject to a claim with a notice that identified the party preparing the report, the specific units or common elements inspected, and the date and time the inspection would occur. Those parties would be allowed to attend the inspection.

The association would be required to provide the report to each unit owner and each party subject to a claim and to allow them 90 days to inspect and correct any condition identified in the report before the special meeting was held.

At least 30 days before the special meeting, the association would be required to provide each unit owner with written notice that would include:

- the date, time, and location of the meeting;
- a description of the claim, the relief sought, anticipated duration, and likelihood of success;
- the third-party report;
- a copy of the contract or proposed contract with the attorney selected to provide assistance with the claim;
- a description of the fees and court costs that could be incurred by the association for prosecuting the claim;

- a summary of the steps taken to resolve the claim;
- a statement that initiating a lawsuit or arbitration could affect market value, marketability, or refinancing of a unit; and
- a description of the manner in which the association proposed to fund the litigation.

This notice could not be prepared by anyone affiliated with the attorney or law firm that would represent the association in the claim.

The bill also would allow the declaration that created a condominium to contain provisions that would require binding arbitration for claims of construction or design defects and would prohibit associations from retroactively modifying or removing arbitration provisions.

This bill would take effect September 1, 2015, and would apply to claims based on acts or omissions that occurred on or after that date.

SUPPORTERS SAY:

CSHB 1455 is necessary to restrict the ability of owners' associations to initiate construction defect claims without the approval of condo owners, which would ensure transparency in the process of initiating litigation. Requiring proper notice and owner approval prior to litigation would help ensure that owners were provided with sufficient information and the ability to make an informed decision. Owners often are unaware that litigation could have a significant impact on the value of and their ability to sell their condominiums. This bill would ensure that owners were properly informed of this impact before initiating litigation. The required notice also would give the parties the ability to sit down and resolve their claims without the need for costly litigation.

This bill also could enable growth in condominium construction by helping to deter excessive litigation initiated by owners' associations. Other states where unit owners' associations are authorized to initiate litigation on behalf of the owners have seen a severe decline in condominium construction. Fear of frivolous liability and increased insurance costs have made condominium construction largely unfeasible, except for condos with high-price units. Demand for condominiums is high across the state, as they often provide a reasonably priced way to move up from renting. Current Texas law limits the ability of construction

companies to build reasonably priced condos for middle and low-income families.

This bill would not restrict the ability of associations or condo owners to sue for construction defects. It simply would require associations to properly inform and seek input from the owners they represent.

OPPONENTS SAY:

CSHB 1455 would create costly and complex barriers to justice for condominium owners. They would be required to jump through numerous administrative hoops without the assistance of counsel before filing a claim. Associations often do not have the resources to hire an expert forensic engineer and to create and distribute a detailed notice that would require them to predict chances of success and costs of litigation.

Generally, in these cases, associations contract with attorneys on a contingency basis, and the attorneys bear the upfront costs of investigating the claims and hiring engineers to determine the likelihood of success. Under the bill, associations would have to bear this cost themselves. This would make it all but impossible for associations to initiate litigation when their owners were facing construction defects.

It also would be difficult for large associations to get the 67 percent of votes required to file a claim. This high bar would give the minority power over the majority and would inhibit the ability of the association to act. Many large associations would have difficulty getting 67 percent of owners to vote in the meeting, even if they were allowed to do so by proxy.

A significant number of construction defect issues arise from failures by construction companies to follow the building code. This often occurs in lower-priced condominiums when developers want to keep costs low. However, the building code provides minimum standards for construction to ensure that affordable housing still is properly built.

NOTES:

The author plans to offer an amendment that would:

- reduce the percentage of votes required to initiate a proceeding from at least 67 percent to more than 50 percent;

- allow a vote to file a suit to be taken at a regular, annual, or special meeting;
- not prohibit attorneys or their affiliates from assuming the cost of hiring a third-party licensed engineer;
- toll the statute of limitations for up to a year, if the procedures of obtaining a report and giving notice were commenced during the final year of the limitations period; and
- make the bill apply to any suit filed or arbitration proceeding initiated after the effective date.

SUBJECT: Expanding the sales tax exemption for aircraft components and services

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — D. Bonnen, Bohac, Button, Darby, Murphy, Parker, Springer, Wray

3 nays — Y. Davis, Martinez Fischer, C. Turner

WITNESSES: For — Yasmina Platt, Aircraft Owners and Pilots Association; Chris Provencio, Textron Aviation; Robby Harless; (*Registered, but did not testify*: Jake Posey, Bell Helicopter; Janine Iannarelli, Par Avion Ltd.; Chris Shields, Texas Agricultural Aviation Association; Stephanie Simpson, Texas Association of Manufacturers; Mignon McGarry, United Technologies Corporation; Bob Delagrammaticas)

Against — None

BACKGROUND: Tax Code, sec. 151.328 exempts from the sales tax repair, remodeling, and maintenance services to aircraft and aircraft components, provided that the aircraft or components are operated or used by a commercial carrier, a flight school, or a person only for an agricultural purpose.

This section also exempts from the sales tax the machinery, tools, supplies, and equipment used in conjunction with aircraft repair and maintenance services, provided that the aircraft or components are operated or used by a commercial carrier or a flight school.

DIGEST: CSHB 1458 would expand the current exemptions on aircraft maintenance services, aircraft components, and related machinery, tools, and supplies to cover all such services and items, not just those provided to certain operators or owners.

This bill would take effect September 1, 2015, and would not affect tax liability accruing before that date.

SUPPORTERS SAY: CSHB 1458 would increase the state's competitiveness in the market for

aircraft service and repair. Texas is one of only a minority of states that charge a sales tax on aircraft maintenance, which means that all Texas services are effectively marked up by 6.25 percent. Because airplanes are inherently mobile, this has a major impact on where owners choose to service their aircraft.

Two Texas facilities estimate that together they lost as much as $3 million combined last year due to this phenomenon. This also costs local economies near aircraft maintenance facilities, where owners or operators stay and visit while the aircraft are worked on. Because this bill would increase ancillary business activity that would be taxed, it could result in increased sales tax revenue.

OPPONENTS SAY:

CSHB 1458 would result in a significant loss of revenue at a time when the state needs to better fund its most basic obligations, such as health care and education.

Although the individual cost of this exemption might not seem very large in comparison to the state budget, the Legislature must consider the aggregate cost of all of the new exemptions and tax cuts. Major tax relief bills already could result in billions of dollars in lost future revenue, and the many individual tax exemptions likely to be added this year will only combine to make that cost unsustainable.

NOTES:

The Legislative Budget Board’s fiscal note estimates that this bill would have a negative impact of $10.3 million to general revenue through fiscal 2016-17.

SUBJECT: Election dates for certain political subdivisions

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Laubenberg, Goldman, Israel, Reynolds, Schofield

0 nays

2 absent — Fallon, Phelan

WITNESSES: For — Ed Johnson, Harris County Clerk office; Deborah Gernes, Travis County WCID No. 17; (*Registered, but did not testify*: Jacquelyn Callanen, Bexar County; Seth Mitchell, Bexar County Commissioners Court; Jesse Romero, Common Cause Texas; Alan Vera, Harris County Republican Party Ballot Security Committee; Eric Opiela, Republican Party of Texas; Ruben Longoria, Texas Association of School Boards; Bill Fairbrother, Texas Republican County Chairmen's Association; Lauren Kalisek, Travis County WCID No. 17; Brad Parsons)

Against — None

On — Keith Ingram, Texas Secretary of State-Director of Elections; (*Registered, but did not testify*: Ashley Fischer, Texas Secretary of State)

BACKGROUND: Election Code, sec. 41.0052(a) permits the governing body of a political subdivision, other than a county, that holds its general election for officers on a date other than the November uniform election date to change its election date to the November uniform election date no later than December 31, 2012.

Many governing bodies have changed their election dates to line up with the uniform November election date, permitting them to hold joint elections with other subdivisions and share in administrative costs. Some governing bodies that use the May uniform election date and did not modify their election date before December 31, 2012, may wish to move elections to the November date.

DIGEST:

CSHB 947 would move from December 31, 2012, to December 31, 2016, the deadline for governing bodies of certain political subdivisions to change their general election date to the uniform November election date.

The bill would not apply to the governing body of a municipal utility district, nor to a county's governing body as under current law.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUBJECT: Mental health assessment of inmates prior to administrative segregation

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Murphy, J. White, Allen, Keough, Krause, Schubert, Tinderholt

0 nays

WITNESSES: For — Greg Hansch, National Alliance on Mental Illness Texas; Douglas Smith, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Katharine Ligon, Center for Public Policy Priorities; Cate Graziani, Mental Health America of Texas; Laura Austin, National Alliance on Mental Illness Texas; Patricia Cummings, Texas Criminal Defense Lawyers Association; Lauren Johnson)

Against — None

On — Lannette Linthicum, Texas Department of Criminal Justice; (*Registered, but did not testify*: Brad Livingston, Texas Department of Criminal Justice; Cynthia Jumper, Texas Tech University Health Sciences Center)

BACKGROUND: The Texas Department of Criminal Justice (TDCJ) houses some inmates in administrative segregation, also known as solitary confinement. Before being placed in administrative segregation, inmates undergo a health assessment, including mental health. If medical staff determine that the inmate's mental health precludes assignment to administrative segregation, an alternative placement in an inpatient psychiatric facility is available.

DIGEST: HB 1083 would require TDCJ to perform a mental health assessment on an inmate before the inmate could be confined in administrative segregation. TDCJ could not confine an inmate in administrative segregation if the assessment indicated that administrative segregation would not be appropriate for the inmate's medical or mental health.

The bill would take effect September 1, 2015.

SUBJECT: Categorizing alleged violations of laws enforced by Ethics Commission

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 6 ayes — Kuempel, Collier, S. Davis, Hunter, Larson, C. Turner

0 nays

1 absent — Moody

WITNESSES: For — Tom "Smitty" Smith, Public Citizen, Inc.; (*Registered, but did not testify*: Joanne Richards, Anti-Corruption Campaign; Liz Wally, Clean Elections Texas; Jesse Romero, Common Cause Texas; Karen Hadden)

Against — None

BACKGROUND: Government Code, subch. E outlines the complaint procedures used by the Texas Ethics Commission to resolve alleged law violations as civil matters. Government Code, sec. 571.1211 outlines two categories for alleged violations. "Category One violations" are violations for which it generally is not difficult to ascertain whether the violation occurred or not. "Category Two violations" are those violations that are not Category One violations.

DIGEST: CSHB 3682 would revise the enforcement process used by the Texas Ethics Commission to place alleged violations in categories.

The bill would repeal the current "Category One" and "Category Two" violation categories and replace them with three categories of violations:

- technical, clerical, or de minimis violations;
- administrative or filing violations; and
- more serious violations.

Commission staff would be required to categorize, in ascending order of seriousness, each violation alleged in a sworn complaint or on a motion by the commission staff. The Ethics Commission would be required to adopt

rules defining what violations were included in each category.

The bill would provide the following resolutions for the violation categories:

- a letter of acknowledgement for technical, clerical, or de minimis violations;
- a notice of administrative or filing error for administrative or filing violations; and
- a notice of violation for a complaint or motion alleging a more serious violation.

The commission would be required to resolve sworn complaints or motions in the form corresponding to the most serious category of an alleged violation.

The bill would make several changes to apply the new violation categories to the procedures in current law. In general, technical, clerical, and de minimis violations would fall under the procedures for current Category One violations, and administrative or filing violations and more serious ones would be handled under Category Two procedures.

The bill would take effect September 1, 2015, and would apply to sworn complaints filed and motions adopted by the commission on or after December 1, 2015.

SUPPORTERS SAY:

CSHB 3682 would revise the Ethics Commission's process for handling alleged violations to better align the violations into categories that reflect their nature and seriousness. The bill would implement recommendations of the Sunset Advisory Commission that were included in the agency's 2013 Sunset bill that was approved by the 83rd Legislature but vetoed by the governor.

Current procedures place alleged violations into one of two categories based on the complexity of evaluating the violation. Category One includes violations for which it generally is not difficult to ascertain whether the violation occurred, and all other violations are in Category Two. This can result in minor violations being in the same category as

serious violations, making it hard for the public and others to distinguish between simple, honest mistakes and more significant violations.

The bill would address this issue by establishing a three-tier violation system that would help the commission, the public, and parties distinguish minor infractions from more serious violations. This could help mitigate the issue of minor complaints carrying the stigma of an ethics violation. The new system also could allow technical and administrative violations to be processed more quickly and efficiently, resulting in more time and resources available to process allegations of more serious violations. The categories established by the bill would be broad enough to make determinations of where to place a violation clear.

The bill would not alter the general procedures used by the commission for handling complaints. It would ensure alleged violations were handled appropriately by applying current Category One procedures to the technical, clerical, and de minimis violation category created by the bill and Category Two procedures to the categories created for administrative or filing violations and more serious violations.

OPPONENTS SAY:

It might be difficult for the commission to make initial the determinations about the category in which alleged violations should be placed. The current categories are broad enough to allow accurate sorting at the front end of the enforcement process, something that might be difficult with the narrower categories that would be established by the bill.

SUBJECT: Regulating sale of raw milk

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Crownover, Naishtat, Guerra, R. Miller, Zedler, Zerwas

4 nays — Blanco, Coleman, S. Davis, Sheffield

1 absent — Collier

WITNESSES: For — Judith McGeary, Farm and Ranch Freedom Alliance; Margaret Errickson; Mark Hutchins; Anna Macnak; Troy Perry; (*Registered, but did not testify*: Glynn Schanen and Daphne Hackenberg, Farm and Ranch Freedom Alliance; Andrew Smiley, Sustainable Food Center; and 26 individuals)

Against — James Terrell, Select Milk Producers, Inc.; Christopher Perkins and Zachary Thompson, TACCHO; Stuart Walker, Texas Environmental Health Association; Lisa Swanson, Texas Pediatric Society; (*Registered, but did not testify*: Albert Cheng, Harris County Public Health and Environmental Services; Jennifer Smith, Texas Association of City and County Health Officials; Duane Galligher, Texas Environmental Health Association; David Reynolds, Texas Osteopathic Medical Association)

On — Darren Turley, Texas Association of Dairymen; Troy Alexander, Texas Medical Association; (*Registered, but did not testify*: Andrew Calcote, Texas Department of State Health Services)

BACKGROUND: Under 25 Texas Administrative Code, part 1, ch. 217, subch. B, sec. 217.32, raw milk may be sold by a dairy producer directly to a consumer but only at the point of production, typically a farm. Dairy producers may sell raw milk in this manner as long as they possess a Grade A Raw for Retail Milk Permit and comply with all sections in the Milk and Dairy chapter of the code for that permit.

DIGEST: CSHB 91 would allow the sale of raw milk or raw milk products directly

to consumers in Texas at either a seller's place of business, a consumer's residence, or farmers' markets. The bill would not authorize the sale of raw milk or raw milk products to or on the grounds of a grocery store, supermarket, or similar market. The seller would be required to have a permit authorizing the sale of raw milk at retail.

The bill would require raw milk sellers to label containers in which the milk would be sold with information regarding the permit holder and the date that the milk was packaged. The label also would be required to contain a disclaimer that the raw milk was unpasteurized and that consuming raw foods could carry certain risks.

CSHB 91 would implement certain raw milk testing and handling requirements, including allowing an individual to receive test results from the inspection of raw milk and requiring the adoption of rules for the safe storage, handling, and transportation of raw milk. The bill also would allow producers to contract with others for the transportation and delivery of raw milk. Producers who failed to follow rules and regulations developed for transport and delivery of raw milk would be held jointly and severally liable for relevant violations.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 91 would broaden access to an already legal product. Ir would remove economic barriers to producers and help consumers who, under current law, must often drive long distances to purchase raw milk. All foods carry a risk of causing food-borne illness, even when they are as heavily regulated as food from commercial producers. Raw milk is not appreciably more dangerous than other raw foods, such as oysters or sushi, and it should not be restricted more aggressively than other similar types of food.

CSHB 91 would allow consumers to make their own choices about the foods they judge to be safe. There is an enthusiastic market for raw milk, and efforts to restrict its distribution disrupt free enterprise. Raw milk presents a potentially lucrative market for dairy producers, and CSHB 91 would place Texas at the forefront of prescribing appropriate requirements for its sale before its projected popularity made it difficult to regulate.

Raw milk already is subject to many regulations to ensure it meets certain safety standards, and CSHB 91 would further ensure that the sale of raw milk occurred in limited situations and under protective guidelines.

OPPONENTS SAY:

CSHB 91 would increase the risk of serious food-borne illnesses, which can cause injury or even death. Raw milk has not been shown to provide any health benefits that exceed the nutrition or wholesomeness of pasteurized dairy products that are widely available, so the risks of increasing access to this product are not outweighed by any potential benefit that cannot be obtained through more common and safe alternatives. Illnesses resulting from increased access to raw milk would not only harm the reputation of raw milk, but they could affect the entire dairy business.

Pasteurization is one of the most effective public health tools developed, and CSHB 91 would ignore its proven safety benefits. The fact that food-borne illness can occur even in heavily regulated commercial food production highlights the dangers of broadening access to something much less tested and processed. In addition, the costs to the state in investigating and treating a possible increase in food-borne illnesses related to raw milk could be considerable.

SUBJECT: Medicaid reimbursement for certain home telemonitoring services

COMMITTEE: Public Health — committee substitute recommended

VOTE: 11 ayes — Crownover, Naishtat, Blanco, Coleman, Collier, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

WITNESSES: For — Julie Hall-Barrow, Children's Health System of Texas; John Davidson, Texas Public Policy Foundation; (*Registered, but did not testify*: Ray Tsai, Children's Health Pediatric Group; Gabriela Saenz, CHRISTUS Health; Mariah Ramon, Teaching Hospitals of Texas; Marina Hench, Texas Association for Home Care and Hospice; Amanda Martin, Texas Association of Business; Jaime Capelo, Texas Chapter American College of Cardiology; Nora Belcher, Texas e-Health Alliance; Marcus Mitias, Texas Health Resources; Dan Finch, Texas Medical Association; Clayton Travis, Texas Pediatric Society; Rebecca Flores, Texas School Alliance; Francis Luna, Texas School Nurses Organization; Stephanie Mace, United Way of Metropolitan Dallas; Casey Smith, United Ways of Texas)

Against — None

On — (*Registered, but did not testify*: Laurie VanHoose, HHSC)

BACKGROUND: Government Code, sec. 531.02164 instituted a statewide program that permits Medicaid reimbursement for home telemonitoring of patients. The program provides home telemonitoring services to individuals with certain specified medical diagnoses, none of which currently focuses on pediatrics.

The program allows a home health agency or hospital physician to monitor blood pressure, blood oxygen levels, weight, and other vital signs for patients using specialized equipment over a secure connection. Physicians can monitor patients in real time, allowing intervention before medical conditions escalate. Remote patient telemonitoring is important to

patients, especially those who live far away from a major medical facility.

DIGEST:

CSHB 1623 would ensure that Medicaid home telemonitoring services were available to pediatric patients with chronic or complex medical needs who:

- were being treated concurrently by at least three medical specialists;
- were medically dependent on technology;
- were diagnosed with end-stage solid organ disease; or
- required mechanical ventilation.

The executive commissioner of HHSC would adopt rules necessary to implement the bill by Dec. 1, 2015.

The bill would direct a state agency needing a waiver or authorization from a federal agency to implement a provision of the bill to request that waiver or authorization. The affected state agency could delay implementation of affected provisions in the bill until the agency received the waiver or authority.

This bill would take effect September 1, 2015.

SUBJECT: Regulating POA restrictive covenants on certain generators for homes

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: For — John Robert Stratton, American Radio Relay League; Jim Phipps, ARRL Member; Kurtiss E. Summers; (*Registered, but did not testify*: Sarah Howard, James Howard, Sallie Howard, and James Howard, American Radio Relay League; William Van Hoy, Texas Propane Gas Association; Craig Bean; Mitchell London)

Against — Patrice Arnold, Texas Community Association Advocates

On — Nim Kidd, Texas Division of Emergency Management

DIGEST: CSHB 939 would prohibit a property owners' association (POA) from restricting an owner's right to install and maintain a permanently installed standby electric generator, defined as a device that converts mechanical energy to electricity that was:

- powered by natural gas, gasoline, diesel fuel, biodiesel fuel, or hydrogen;
- fully enclosed in an integral manufacturer-supplied sound-attenuating enclosure;
- connected to the main electrical panel of a residence by a transfer switch; and
- rated for a generating capacity of at least seven kilowatts.

The POA could adopt and enforce provisions in its dedicatory instruments to require:

- that the generator be installed and maintained in good condition and in compliance with the manufacturer's specifications and any applicable governmental health, safety, electrical, and building

codes;

- that all electrical, plumbing, and fuel line connections be installed by licensed contractors;
- that all electrical and gas or fuel line connections be maintained in good condition and installed in accordance with applicable governmental health, safety, electrical, and building codes;
- that all liquefied petroleum gas fuel line connections be installed in accordance with rules and standards adopted by the Texas Railroad Commission;
- that all separate fuel tanks be maintained according to municipal zoning ordinances and governmental health, safety, electrical, and building codes;
- that any unsafe component be removed or replaced;
- that the owner cover the generator with a screen if it were visible from the street, located in an unfenced backyard, visible from a neighbor's yard, or visible through a fence;
- that periodic testing be conducted according to a reasonable schedule; or
- that the generator be located entirely on the owner's property, although a regulation on the generator's location would be unenforceable if it increased the cost of installation by a certain amount.

The POA could prevent the owner from using the generator to generate all or substantially all of the power to a home, except during periods when power was unavailable or intermittently available from the utility.

CSHB 939 would require that in the event of a hearing, action, or proceeding to determine whether a proposed or installed generator complied with a POA requirement, the party asserting noncompliance would bear the burden of proof. If the generator was installed by a licensed contractor or was approved by a political subdivision, that would be conclusive proof that the generator had been installed in compliance with the POA regulation.

If the POA required the submission of an application for the approval of exterior improvements, it could require the owner to submit an application

for the installation of a generator, but the information required for the application could not be greater or more detailed than the application for any other improvement.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply to dedicatory instruments adopted before, on, or after the effective date.

SUPPORTERS SAY:

CSHB 939 would allow homeowners in property owners' associations (POAs) to prepare for disasters while providing stringent requirements to ensure their neighbors were not harmed or inconvenienced by the nearby presence of a standby electric generator. Many individuals depend on electrical medical equipment, and when their homes lose power, they risk health complications and possibly their lives. Standby electric generators help to ensure that necessary equipment continues to operate even after power lines have been brought down in a storm. Generators also could provide an important resource to neighborhoods after a natural disaster and might be helpful in supporting the work of emergency personnel.

The bill would provide strict requirements for the installation and maintenance of generators to ensure the safety of the owner and surrounding neighbors. It also would allow the POA to regulate the location of the generator and require a screen to shield it from view, which would uphold the aesthetics of the neighborhood. Generators allowed under this bill are small and make less noise than an air conditioning unit. They would not present a noise nuisance because they would operate only when no power was available from the utility.

Application requirements for generators beyond those required by CSHB 939 would be unnecessary because most applications for approval of an exterior improvement used by POAs require that installations be conducted according to relevant building and electrical codes, which this bill would require. While the burden of proof would rest with the POA to prove noncompliance, this is generally where the burden rests in disputes over whether a property owner is compliant with a POA regulation.

OPPONENTS

CSHB 939 would take away a POA's right to ensure the neighborhood's

SAY: safety and aesthetics and essentially would make POAs powerless over regulating generators. The bill would strip a POA of its ability to determine whether a generator was acceptable in the neighborhood by applying external standards. It should give POA's more authority to regulate generators based on noise, which can be a nuisance in a quiet neighborhood.

The bill unfairly would shift the burden of proof to POAs to show noncompliance, even though they would have no way to prove this without the property owner's cooperation in providing information or documentation on the installation.

CSHB 939 would prohibit a POA from requiring additional information about a generator when an owner submitted an application for approval. This would be unreasonable because an electric generator is much more complicated and dangerous than, for instance, a wooden fence.

SUBJECT: Classifying certain charter schools as local government entities

COMMITTEE: Public Education — favorable, without amendment

VOTE: 9 ayes — Aycock, Allen, Bohac, Deshotel, Galindo, González, Huberty, K. King, VanDeaver

0 nays

2 absent — Dutton, Farney

WITNESSES: For — Lindsey Gordon, Texas Charter Schools Association; (*Registered, but did not testify*: Amanda List, ResponsiveEd; Addie Gomez, Texans for Quality Public Charter Schools; Monty Exter, the Association of Texas Professional Educators)

Against — None

On — (*Registered, but did not testify*: Von Byer, Texas Education Agency)

BACKGROUND: Government Code, ch. 791 authorizes interlocal contracts between government entities to perform certain government functions and services.

Government Code, ch. 2259 authorizes a government unit to establish a self-insurance fund to protect the governmental unit and its officers, employees, and agents from insurable risks or hazards.

Local Government Code, sec. 172.004 authorizes a political subdivision or a group of political subdivisions through an interlocal cooperative agreement to provide health and accident coverage for certain political subdivision employees. This coverage may be provided directly or through a risk pool.

Labor Code, ch. 504, subch. B, under the Texas Workers' Compensation Act, requires a political subdivision to extend workers' compensation benefits to its employees by:

- becoming a self-insurer;
- providing insurance under a workers' compensation insurance policy; or
- entering into an interlocal agreement with other political subdivisions providing for self-insurance.

Currently, open-enrollment charter schools are not classified as local government entities or political subdivisions, barring them from receiving certain benefits and protections provided to public school districts to safeguard public funds and sustain financial viability. Having access to these benefits and protections would permit open-enrollment charter schools to enter into interlocal cooperation agreements and to effectively plan and manage risks associated with civil liability, employee benefits, and workers' compensation.

DIGEST:

HB 1170 would classify an open-enrollment charter school as a local government for the purpose of participating in interlocal cooperative agreements and establishing a self-insurance fund, except that it could not issue public securities.

Open-enrollment charter schools would be classified as political subdivisions to participate in interlocal cooperative agreements for health and accident coverage of certain employees.

This bill would permit an open-enrollment charter school to extend workers' compensation benefits to employees through certain coverage methods available to a political subdivision. A school electing to extend workers' compensation benefits would be considered a political subdivision for purposes of workers' compensation. An open-enrollment charter school that self-insured either individually or collectively would be considered an insurance carrier for the purposes of the Texas Workers' Compensation Act.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUBJECT: Notification to TxDOT about certain planned drilling operations

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 10 ayes — Darby, Paddie, Anchia, Canales, Dale, Keffer, Landgraf, Meyer, Riddle, Wu

0 nays

3 absent — Craddick, Herrero, P. King

WITNESSES: For — (*Registered, but did not testify*: Cyrus Reed, Lone Star Chapter Sierra Club)

Against — (*Registered, but did not testify*: Ben Shepperd, Permian Basin Petroleum Association)

On — Bill Hale, Texas Department of Transportation; Lon Burnam; (*Registered, but did not testify*: Bill Stevens, Texas Alliance of Energy Producers; Greg Macksood)

DIGEST: CSHB 1633 would direct the Railroad Commission to adopt rules requiring an operator to state in an application for a permit to drill an oil or gas well whether the well would be located within an easement or within 50 yards of an easement held by the Texas Department of Transportation (TxDOT). If a well would be located within an easement or within 50 yards of an easement, the Railroad Commission would be required to forward a copy of the application to TxDOT within 14 days after receiving it.

The bill would specify that it did not grant TxDOT any authority regarding the approval of an application for a permit to drill an oil or gas well.

This bill would take effect September 1, 2015, and would apply only to a permit application filed on or after that date.

SUPPORTERS SAY:

CSHB 1633 would give valuable information to TxDOT to prevent conflicts between planned well sites and planned roadways. With Texas' growing population and economy, new paths for roadways are being planned frequently. However, TxDOT currently does not have information about planned well sites. This has led to costly conflicts that can stall large road construction projects. This bill would enable direct communication between TxDOT and the operator and would allow any potential conflict to be realized and resolved sooner and with less expense to the taxpayer.

There are few private service roads to oil and gas production wells that connect to TxDOT roads. Most connect to county and local roads, the easements for which are already on plat maps accessible to the operators. Any state-level action on this would affect few operations.

OPPONENTS SAY:

While CSHB 1633 could be helpful, the bill would not go far enough in addressing the impact of oil and gas operations on transportation. For instance, the operator has the ability to select where a private service road to a well connects with the road network. This can impact how roads are planned and maintained, but the bill would not address this unless the planned well happened to be within 50 yards of an easement.